

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 12th DAY OF OCTOBER 2018

THE HON'BLE MR.JUSTICE M.SUNDAR

A.No.7821 of 2018

in

C.S.D.No.66384 of 2018

Pradeep Stainless India Pvt.Ltd.
having its factory at
No.5, Gajapathy Lala Street,
Triplicane, Chennai - 600 005
Rep by its Director

Also at

C-3 & B-7, Phase II,
MEPZ, Special Economic Zone,
Tambaram, Chennai - 600 045,
Tamil Nadu, India.

... Applicant/Plaintiff

-Versus-

1.M/s.JB Enterprises,
having its factory at
Unit II,A16(Pt) Phase II,
2nd Main Road,
MEPZ - Special Economic Zone,
Tambaram, Chennai - 600 045.
Rep by its Partners

And Also at

SIPCCOT Unit,
G63, Industrial Park,
2nd Main Road, Vallam Vadagal B,
Sriperumbudur,
Chennai - 602 105.

2.V.Jaikumar,
S/o.Venkatesan,
C-8, Sriji Hill View Flat,
Durga Nagar, Tambaram Sanatorium,
Chennai - 600 045.

... Respondents/Defendants

A.No.7821 of 2018:

Application praying that this Hon'ble Court be pleased to grant leave to the Applicant/Plaintiff to sue the Respondents/Defendants before this Hon'ble Court in the above suit.

This Application coming on this day before this court for hearing the court made the following order:-

Sole plaintiff in the main suit is the lone applicant herein. Defendants 1 and 2 in the main suit are respondents 1 and 2 respectively in the instant application. Parties in this application are referred to by their respective ranks in the main suit for the sake of convenience and clarity.

2. This application has been taken out by plaintiff with a prayer which is under Clause 12 of Letters Patent i.e., leave to sue is the prayer. Leave to sue has been sought as both the defendants are outside the territorial jurisdiction of this Court i.e., Tambaram and Tambaram Sanatorium.

3. A perusal of the plaint reveals that the prayers in the plaint are for infringement qua trade dress, infringement of copyright and other incidental relief touching upon the same.

4. A perusal of the plaint also reveals that it is one under Section 27 of the 'Trade Marks Act, 1999' ('TM Act' for brevity) read with Section 134 of TM Act. Likewise, with regard to copyright the plaint is also under

Sections 51 and 55 of the Copy Right Act, 1957, which is to be read with Section 62 of the Copy Right Act, 1957.

5. In the light of sub-Section 1 of Section 134 of TM Act and Sub-Section 2 of Section 62 of the Copy Right Act, 1957, plaintiff can sue where it is carrying on business or residing. A perusal of the plaint reveals that the plaintiff has a factory at No.5, Gajapathy Lala Street, Triplicane, Chennai- 600 005. There is no dispute or disagreement that this Triplicane address is within the territorial jurisdiction of this Court. To be noted, there is a reference to another factory address in Tambaram which also is plaintiff's factory, but, it is outside the territorial jurisdiction of this Court.

6. However, as according to the plaintiff and as according to the plaint averment, plaintiff is having a factory in Triplicane within the territorial jurisdiction of this Court, which has been shown in the short and long cause titles of the plaint, plaintiff is entitled to institute the suit in the light of sub-Section 1 of Section 134 of TM Act and sub-Section 2 of Section 62 of the Copy Right Act, 1957.

7. In the result, leave to sue under clause 12 is not necessary.

8. Mr.Rajasekaran, learned counsel for plaintiff submitted that this application has been moved only as a

matter of abundant caution. This Court has taken note of such submission.

9. In the light of the narrative supra, this application is disposed of as not necessary.

10. Registry is directed to process the plaint vide C.S.D.No.66384 of 2018, if it is otherwise in order.

Sd/.M.S.J

12.10.2018

//Certified to be a true copy//

Dated this the th day of 2018.

DL/15.10.2018

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

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